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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 OSCAR M. CONSTANCIO,

12 Petitioner,

13 v.

14 SACRAMENTO SUPERIOR COURT,

15 Respondent.  
16

No. 2:22-CV-1277-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas  
18 corpus under 28 U.S.C. § 2254. On October 3, 2022, the Court dismissed Petitioner's petition  
19 and directed Petitioner to file an amended petition within 30 days. Petitioner was warned that  
20 failure to file an amended petition may result in dismissal of this action for lack of prosecution  
21 and failure to comply with court rules and orders. See Local Rule 110. To date, Petitioner has  
22 not complied.

23 The Court must weigh five factors before imposing the harsh sanction of  
24 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
25 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
26 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
27 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on  
28 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,

1 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
2 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
3 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
4 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
5 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to  
6 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
7 1260-61 (9th Cir. 1992).

8 Having considered these factors, and in light of Petitioner's failure to file an  
9 amended petition as directed, the Court finds that dismissal of this action is appropriate.

10 Based on the foregoing, the undersigned recommends that this action be  
11 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and  
12 orders.

13 These findings and recommendations are submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court. Responses to objections shall be filed within 14 days after service of  
17 objections. Failure to file objections within the specified time may waive the right to appeal.  
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 Dated: December 5, 2022



21 DENNIS M. COTA  
22 UNITED STATES MAGISTRATE JUDGE  
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